

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
ACS of Alaska, Inc., ACS of Anchorage, Inc.,	)	WC Docket No. 08-220
ACS of Fairbanks, Inc., and ACS of the	)	
Northland, Inc. Petition for Conversion to	)	
Price Cap Regulation and for Limited Waiver	)	
Relief	)	

**REPLY COMMENTS**

ACS of Alaska, Inc. (“ACSAK”), ACS of Anchorage, Inc. (“ACSA”), ACS of Fairbanks, Inc. (“ACSF”), and ACS of the Northland, Inc. (“ACSN”) (collectively, the “ACS LECs”), the rate-of-return regulated local exchange carrier (“LEC”) subsidiaries of Alaska Communications Systems Group, Inc. (“ACS”), hereby reply to the separate comments filed by AT&T Inc. (“AT&T”) and General Communication Inc. (“GCI”) in response to the above-captioned Petition. In that Petition, the ACS LECs request that the Commission grant limited waivers of its rules as necessary to permit the ACS LECs to (i) convert to price cap regulation as of July 1, 2009 and (ii) retain interstate common line support (“ICLS”) for their study areas following such conversion. Neither AT&T nor GCI objects to the ACS LECs’ request to convert to price cap status, or otherwise raises material questions that should prevent the relief sought in the Petition. The ACS LECs respectfully request that the Commission, through the Wireline Competition Bureau, expeditiously find that the ACS LECs have satisfied the criteria for the requested waivers and grant the Petition.

**I. BACKGROUND**

On October 23, 2008, the ACS LECs filed the Petition, seeking limited waivers of the Commission’s rules as necessary to permit the ACS LECs to convert to price cap status, in a

manner consistent with authority recently granted to four other midsize carriers to convert from rate-of-return to price cap regulation in accordance with principles established in the *CALLS Order*.<sup>1</sup> Only two parties – AT&T and GCI – filed comments in response to the Petition.<sup>2</sup> Notably, neither AT&T nor GCI objects to the ACS LECs’ proposal to convert to price cap status; indeed, both commenting parties profess support for incentive-based price cap regulation.<sup>3</sup> However, AT&T claims that the ACS LECs do not qualify for the average traffic sensitive (“ATS”) target rate of \$0.0095 specified in the Petition.<sup>4</sup> For its part, GCI asks the Commission to “clarify” a number of issues allegedly raised by the Commission’s forbearance from the application of certain dominant carrier regulations to ACSA in the *ACSA Forbearance Order*, and asserts that ACSA does not qualify for price cap status.<sup>5</sup>

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<sup>1</sup> See *Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, Order, 23 FCC Rcd 7353 (WCB 2008) (“*PRTC Order*”); *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, Order, 23 FCC Rcd 5294 (2008) (“*Windstream Order*”). See also *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) (“*CALLS Order*”).

<sup>2</sup> See Comments of AT&T Inc., WC Docket No. 08-220 (Dec. 8, 2008) (“*AT&T Comments*”); Comments of General Communication Inc., WC Docket No. 08-220 (Dec. 8, 2008) (“*GCI Comments*”).

<sup>3</sup> See AT&T Comments at 4 (“AT&T supports ACS’s petition to convert from rate of return to price cap regulation and its requested waivers to allow it to retain frozen interstate common line support for their study areas following the conversion.”); GCI Comments at 1 (noting that GCI “does not object to the concept of converting [the ACS LECs] to price caps”).

<sup>4</sup> See AT&T Comments at 2.

<sup>5</sup> See GCI Comments at 2. See also *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 USC §160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access*

## II. DISCUSSION

As demonstrated herein, neither AT&T nor GCI raises any material question of law or fact that should preclude the relief sought in the Petition.

### A. The ACS LECs Qualify for the \$0.0095 Target Rate Specified in Section 61.3(qq)(2)

Section 61.3(qq)(2) specifies an ATS target rate of \$0.0095 where carriers are owned by a holding company with an “average of less than 19 Switched Access End User Common Line charge lines per square mile . . . .”<sup>6</sup> The Petition includes a signed declaration stating that the ACS LECs serve approximately 17.9 end user common line charge lines per square mile,<sup>7</sup> thereby qualifying for the \$0.0095 rate. Notwithstanding the plain text of the rule, AT&T argues that the ACS LECs should not qualify for that rate, based on AT&T’s unsupported theory that this rate was intended only for rural carriers. Further, AT&T disputes that the ACS LECs’ line density is less than 19 lines per square mile, citing out-of-date and irrelevant data.

Nothing in Section 61.3(qq)(2) makes any distinction between rural and non-rural carriers. Rather, this Section distinguishes between companies solely based on line density as calculated at the holding company level.<sup>8</sup> AT&T provides no support for its contention that Section 61.3(qq)(2) applies only to rural LECs. AT&T misquotes the *CALLS Order*, claiming that paragraph 142 states that the \$0.0095 target was *proposed* for “entirely rural price cap

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*Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) (“ACS Forbearance Order”), recon. pending.*

<sup>6</sup> 47 C.F.R. § 61.3(qq)(2).

<sup>7</sup> See Petition, Declaration of Thomas R. Meade at ¶ 5.

<sup>8</sup> AT&T itself cites the relevant language, which does not include any discussion of “rural” carriers. See AT&T Comments at 2-3.

LECs.”<sup>9</sup> That paragraph actually states that the \$0.0095 target was *proposed* for “very low-density price cap LECs.”<sup>10</sup> Even assuming AT&T’s misquote to be the result of mere error, AT&T’s intended point would prove nothing; the governing rule, not any proposal, is operative.

AT&T also purports to calculate a line density for ACS in excess of 19 Switched Access End User Common Line charge lines per square mile using (i) 1994 data and (ii) DL070 Cat 1.3 Loop counts for base year 2007.<sup>11</sup> Any such calculation must be viewed with skepticism. The 1994 data do not appear to be publicly available, precluding the duplication of AT&T’s findings. Further, these data apparently were collected in response to a *Notice of Inquiry* almost fifteen years ago, and for purposes unrelated to the qualification of companies under Section 61.3(qq), which had not been adopted at the time. Moreover, DL070 Cat 1.3 Loops are not “Switched Access End User Common Line Charge lines” as specified in Section 61.3(qq). Rather, DL070 Cat 1.3 Loops include unbundled network element (“UNE”) loops sold by the ACS LECs to their competitors. In fact, the number of DL070 Cat 1.3 Loops claimed by AT&T is approximately 20 percent higher than the number of “Switched Access End User Common Line Charge lines” properly used in the ACS LECs’ calculations. Even assuming AT&T’s square mileage estimate to be accurate, using the correct line count the ACS LECs would still serve fewer than 19 “Switched Access End User Common Line Charge lines” per square mile.<sup>12</sup>

AT&T includes no declaration attesting to the veracity of AT&T’s data or analysis. In contrast, the Petition includes a declaration by the Vice President for Carrier

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<sup>9</sup> See AT&T Comments at 3 n.7.

<sup>10</sup> *CALLS Order* at ¶ 142. This is entirely consistent with the text of Section 61.3(qq)(2).

<sup>11</sup> See AT&T Comments at 2-3 and Exh. A.

<sup>12</sup> See Declaration of Thomas R. Meade in Support of the Reply Comments of the ACS LECs at ¶ 5.

Markets and Economic Analysis of ACS. Moreover, the declaration attached hereto further documents the methodology employed by the ACS LECs in calculating the 17.9 lines per square mile figure reported in the Petition.<sup>13</sup> Based on the foregoing, the Commission should conclude that the \$0.0095 target rate applies to the ACS LECs.<sup>14</sup>

**B. The ACSA Forbearance Order Does Not Require Modification of the Requested Relief**

As noted in the Petition, the Commission forbore from applying certain dominant carrier regulations to ACSA in the *ACSA Forbearance Order*.<sup>15</sup> Accordingly, while ACSA is not on comparable regulatory footing with CLECs such as GCI,<sup>16</sup> ACSA enjoys a degree of pricing flexibility under the *status quo*. Nevertheless, ACSA remains a rate-of-return carrier.<sup>17</sup> The Petition seeks authority to transition ACSA to price cap regulation, consistent with the transition approved for four other companies operating rate-of-return ILECs.

Under the ACS LECs' proposal, ACSA would come under the Commission's comprehensive price cap regime for all interstate regulated rates, in lieu of the caps imposed on

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<sup>13</sup> *Id.* at ¶¶ 4-5.

<sup>14</sup> AT&T's attempt to limit the ACS LECs to the relief granted to Windstream is misguided. *See* AT&T Comments at 4. As AT&T itself notes, Windstream had calculated a line density of 20 lines per square mile. Therefore, Windstream did not qualify for the \$0.0095 target rate, and instead was required to meet the \$0.0065 target rate. Since the ACS LECs have a lower line density than Windstream, they qualify for the higher \$0.0095 target rate.

<sup>15</sup> Petition at 2.

<sup>16</sup> Notably, the Commission did not issue any declaratory ruling that ACSA was no longer a rate-of-return carrier. *See ACSA Forbearance Order* at ¶ 10. As GCI itself admits, ACSA remains subject to dominant carrier regulation of its special access services and still must file tariffs with the Commission. *See* GCI Comments at 2.

<sup>17</sup> GCI acknowledges as much. *See* GCI Comments at 7 (noting that each of the ACS LECs "are currently under rate-of-return regulation . . .").

individual switched access rate elements under the *ACSA Forbearance Order*.<sup>18</sup> As a result, ACSA would have greater incentives to increase efficiency across all of its various service offerings, would become one of many carriers subject to the well-established, uniform regime of price cap regulations, and would enjoy pricing flexibility where permitted under the Commission's rules. Both ACSA and the public would benefit from these changes.

Following conversion, ACSA would be subject to all of the Commission's price cap rules, including the obligation to *reduce* rates imposed by Section 61.45.<sup>19</sup> While ACSA would enjoy some nominal flexibility to increase certain *individual* rate elements under price cap status in some circumstances (if other rate elements were lowered below the level of the cap), any such increases would not be sustainable due to the substantial competition the Commission has identified in the market.<sup>20</sup> ACS estimates, based on the current (capped) levels of the rate elements that would make up ACSA's ATS rate following the proposed transition, that price cap regulation would result in no net increase, and in all likelihood a decrease in price. The ACS LECs also believe that the operation of the X-factor would reduce traffic-sensitive prices in the

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<sup>18</sup> See *ACSA Forbearance Order* at ¶ 60. In the Petition, the ACS LECs requested that the Commission relax the conditions imposed in the *ACSA Forbearance Order*, such as price caps on individual switched access rate elements, because ACSA would be subject to the Commission's price cap regime. Petition at 2 n.2.

<sup>19</sup> 47 C.F.R. § 61.45.

<sup>20</sup> See, e.g., *ACSA Forbearance Order* at ¶ 3 ("One critical factor [justifying the requested relief] is the evidence that ACS faces extraordinary facilities-based competition in the Anchorage market.").

markets outside of Anchorage over time.<sup>21</sup> At the same time, the Petition proposes to continue the freeze on ACSA's ICLS imposed in the *ACSA Forbearance Order*.<sup>22</sup>

GCI claims that it is "unclear how the price cap rules would even apply to [ACSA]" given the non-dominant treatment of its switched access services.<sup>23</sup> However, as noted above, the price caps applied to ACSA's switched access services under the *ACSA Forbearance Order* would be replaced by price caps under Part 61 of the Commission's rules. GCI offers no purpose that would be served by subjecting ACSA's switched access charges to rate-of-return regulation before converting them to price cap regulation, as GCI suggests.<sup>24</sup>

GCI also asserts that converting ACSA to price cap status would somehow permit the ACS LECs, as a collective unit, "to use rate reductions for [ACSA] to reach the \$.0095/minute Target Rate, without similar rate reductions for [the other ACS LECs] subject to less competition."<sup>25</sup> Here, GCI labors under the false assumption that the ACS LECs would calculate rates – including ATS rates – by averaging across all of the ACS LECs.<sup>26</sup> The Petition clearly proposes that the ACS LECs would convert to price cap status using a single, consolidated tariff "*with separate rates for each study area.*"<sup>27</sup> Indeed, treating the ACS LECs

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<sup>21</sup> See Petition at 6.

<sup>22</sup> *ACSA Forbearance Order* at ¶ 71.

<sup>23</sup> See GCI Comments at 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 4.

<sup>26</sup> GCI claims that "ACS is proposing to consolidate six study areas into a single tariff-filing entity." GCI Comments at 7. The ACS LECs propose to file a consolidated tariff, although each LEC would remain a separate "filing entity," with separate rates, for purposes of applying the Commission's price cap rules.

<sup>27</sup> Petition at 4 (emphasis supplied). See also Declaration of Thomas R. Meade in Support of the Reply Comments of the ACS LECs at ¶ 6.

collectively as a single entity would introduce precisely those complications that GCI describes. The ACS LECs have no intention of developing blended rates or PCIs across their study areas, nor does the Petition suggest such an approach. While the ACS LECs are aware of no basis for interpreting the Commission's rules as GCI suggests, to the extent necessary the ACS LECs request a waiver of the Commission's rules to allow the ACS LECs to calculate their rates separately for each study area but file them in a single tariff.

GCI maintains that because, as price cap carriers, the ACS LECs could offer mass market broadband services on a non-common carrier basis under the *Wireline Broadband Internet Access Order*, the Commission should require each ACS LEC to propose a cost allocation with respect to such services.<sup>28</sup> In doing so, GCI wholly ignores the fact that the only reason that the Commission imposed such a requirement on ACSA in the *ACSA Forbearance Order* was because ACSA would remain subject to rate-of-return regulation.<sup>29</sup> GCI also ignores precedent concluding that such a requirement is not necessary for price cap carriers.<sup>30</sup> GCI offers no justification for deviating from this precedent.

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<sup>28</sup> GCI Comments at 5-6.

<sup>29</sup> See *ACSA Forbearance Order* at ¶ 80 (“We find that ACS has not addressed the cost allocation concerns here, *given the continued rate of return regulation of its special access services, as well as its services outside of the Anchorage study area . . . .* Our evaluation of ACS’s proposed cost allocation for these services thus will help to ensure that the rates for special access services will continue to be just and reasonable.”).

<sup>30</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order, 20 FCC Rcd 14853, at ¶ 82 (2005) (noting that price cap regulation leaves LECs with little incentive to shift costs from enhanced services operations to tariffed telecommunications services because those costs cannot be captured through increased regulated rates).



In short, GCI has identified no “issues of first impression . . . .”<sup>31</sup> The proposal presented in the Petition is similar to proposals that the Commission already has granted, and as such can be resolved expeditiously.<sup>32</sup> The ACS LECs’ proposal with respect to ACSA is straightforward and consistent with Commission policy. As explained in the Petition, the requested relief would benefit ratepayers and put ACSA on a more predictable regulatory path, subject to the same rules that apply to dozens of price cap ILECs today.

**C. There Is No Basis For Reducing the ICLS Provided to the ACS LECs**

GCI urges the Commission to set the ICLS received by the ACS LECs “at the current competitive ETC per-line level . . . .”<sup>33</sup> GCI provides no basis for this proposal, and adoption of such a proposal would be inconsistent with Commission precedent.

In granting authority to four other midsize carriers to convert from rate-of-return to price cap regulation, the Commission explicitly afforded them the same relief sought by the ACS LECs. Specifically, the Commission allowed these carriers to retain per-line ICLS based on their per-line disaggregated ICLS amounts in the year preceding conversion to price cap status, frozen at those per-line levels on a going-forward basis, with aggregate annual ICLS support capped at an amount equal to overall ICLS in the year preceding conversion to price cap status (after application of any required true-ups).<sup>34</sup> GCI provides no reason whatsoever to depart from this precedent. When the Commission adopted a cap for CETC support, it did not

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<sup>31</sup> GCI Comments at 6.

<sup>32</sup> Contrary to GCI’s suggestion, *id.* at 6, the Commission can conduct a thorough analysis in an expeditious fashion without “rubber-stamping” the Petition.

<sup>33</sup> *Id.* at 9.

<sup>34</sup> *PRTC Order* at ¶ 23; *Windstream Order* at ¶ 20 n.69 (citing the *ACSA Forbearance Order*).

find it necessary to cap the ICLS received by ILECs – including price cap ILECs – which has been stable in recent years (unlike the support received by CETCs).<sup>35</sup> GCI's request is nothing more than an inappropriate attempt to relitigate established precedent.

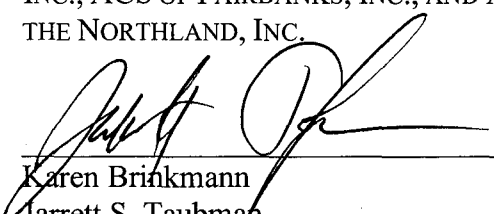
### III. CONCLUSION

For the foregoing reasons, the ACS LECs request that the Commission expeditiously grant the requested waivers to permit them to convert to price cap regulation as of July 1, 2009.

Respectfully submitted,

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INC., ACS OF FAIRBANKS, INC., AND ACS OF  
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<sup>35</sup> See *High Cost Universal Service Support*, Order, 23 FCC Rcd 8834, at ¶ 10 (2008).

**DECLARATION OF THOMAS R. MEADE  
IN SUPPORT OF THE REPLY COMMENTS OF THE ACS LECs**

I, Thomas R. Meade, hereby make the following declarations, under penalty of perjury, in support of the foregoing Reply Comments:

1. I am Vice President for Carrier Markets and Economic Analysis of Alaska Communications Systems Group, Inc. ("ACS"), and I am familiar with ACS's local exchange and exchange access operations generally, and the accounting, pricing and tariffing practices of its local exchange carrier ("LEC") subsidiaries specifically.
2. ACS is a holding company with four subsidiaries operating as LECs in the State of Alaska. These are ACS of Anchorage, Inc. ("ACSA"), ACS of Alaska, Inc. ("ACSAK"), ACS of Fairbanks, Inc. ("ACSF"), and ACS of the Northland, Inc. ("ACSN") (collectively, the "ACS LECs"). Each of the ACS LECs was owned by ACS as of July 1, 2000.
3. The ACS LECs are currently regulated as rate-of-return carriers under the rules of the Federal Communications Commission ("FCC"), although ACSA is subject to caps on its individual switched access rate elements pursuant to the *ACSA Forbearance Order*. As the ACS LECs stated in their Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, averaging all of the access lines within the ACS holding company, the ACS LECs serve approximately 17.9 Switched Access End User Common Line ("EUCL") Charge lines (as defined by the FCC) per square mile.
4. The ACS LECs have calculated their average line density using (i) the study area boundaries delineated in ACS's publicly available tariffs, which were used to manually calculate the number of square miles in each study area and (ii) the EUCL Charge line counts reported by ACS in its FCC Form 507, which most recently was submitted to the Universal Service Administrative Company by electronic filing on December 2, 2008.
5. As indicated in ACS's FCC Form 507, as of June 30, 2008 the ACS LECs served approximately 177,316 Switched Access EUCL Charge lines. While AT&T Inc. claims in Exhibit A of its Comments that the ACS LECs served 213,795 DL070 Cat 1.3 Loops during base year 2007, this figure includes unbundled network element ("UNE") loops sold by the ACS LECs to competitors; AT&T Inc.'s line count is not limited to Switched Access EUCL Charge lines as specified by Section 61.3(qq)(2) of the Commission's rules, and as such inflates by about 20 percent the applicable line count for the ACS LECs. Even assuming AT&T Inc.'s square mileage estimate to be accurate, using the correct line count the ACS LECs would still serve fewer than 19 Switched Access EUCL Charge lines per square mile.
6. With the exception of ACSA, the ACS LECs currently participate in the National Exchange Carrier Association ("NECA") common line and traffic sensitive pools. Consequently, their current rates were not developed using study area-specific costs and demand. In order to initialize rates using study area-specific costs and demand, the ACS LECs propose to base the initial rates of the ACS LECs, other than ACSA, on actual 2008 rate base, expense, and

demand. Part 36 and 69 cost studies would be developed for each individual study area as adapted to the price cap rate structure. Access rates would be developed for each individual rate element by dividing the interstate revenue requirement for each rate element by the actual 2008 demand for that service. Each separate study area would have its own individual set of rates. Both traffic sensitive and special access rates would be based on actual 2008 rate base, expense, and demand. ACSA would initialize switched access rates based on the rates capped in the *ACSA Forbearance Order*, as adapted to the price cap rate structure. ACSA would initialize special access rates in the same manner as the other ACS LECs.

The foregoing is true and accurate to the best of my information, knowledge and belief, as of the date of this declaration.



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Thomas R. Meade

Executed: December 23, 2008